

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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COMMONWEALTH OF MASSACHUSETTS,

v.

KAREN READ.

* * * * *

* Docket No. 2282CR00117

BEFORE THE HONORABLE BEVERLY CANNONE
FRIDAY, JUNE 21, 2024
TESTIMONY OF BRIAN LOUGHRAN

APPEARANCES:

For the Commonwealth:

BY: ADAM LALLY, A.D.A.
LAURA MCLAUGHLIN, A.D.A.

For the defendant:

BY: DAVID YANNETTI, ESQ.
ALAN JACKSON, ESQ.
ELIZABETH LITTLE, ESQ.

Dedham, Massachusetts
Room 25

Christine D. Blankenship, CVR
Court Reporter/Transcriber

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
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Brian Loughran				
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1 (Court in session.)

2 (Defendant is present with counsel.)

3 (Jury in.)

4 THE COURT: All right. So, Mr. Jackson, yesterday you
5 told me you would like ten minutes for your argument. I'll
6 hear you now.

7 MR. JACKSON: Thank you, Your Honor. Your Honor, I'll
8 be brief. The Court must consider, after viewing the
9 evidence in light most favorable to the Commonwealth,
10 whether a rational jury can find the elements of the charge
11 of beyond a reasonable doubt. And here, the case that the
12 Commonwealth has submitted to the jury after resting is
13 insufficient to meet such a finding. There's no question
14 but this -- what this particular prosecution in this
15 particular case, no reasonable or rational jury could come
16 to a unanimous verdict in favor of the Commonwealth.

17 I want to, if I can, focus my argument on count one,
18 two, and three and the specific element of each count.

19 THE COURT: Okay.

20 MR. JACKSON: In each one of those counts, there must
21 be evidence that the vehicle killed John O'Keefe. There has
22 been no competent evidence presented in the Commonwealth's
23 case that Karen Read's vehicle actually struck John
24 O'Keefe. There's been conjecture. There's been
25 speculation, but no actual competent evidence. The

1 Commonwealth's entire case relies on a theory built on the
2 shoulders of a trooper named Joe Paul who testified a
3 couple of days ago. And his theory, according to the
4 Commonwealth, is that John O'Keefe's arm was struck. He was
5 spun around in sort of a pirouette. He was projected 30
6 feet to the left, hit his head on a curb or the road in the
7 intervening -- intervening time before coming to a final
8 rest spot about 30 feet away. Everything in the
9 Commonwealth's case, everything relies on that theory, that
10 theory of damage to the taillight at the scene. If a
11 rational jury could not unanimously determine that Trooper
12 Joe Paul's theory is true beyond a reasonable doubt, then
13 we believe the motion has to be granted. There is no
14 competent medical evidence to support that theory. There's
15 no competent physical evidence if the taillight could break
16 and shatter in the way that they've suggested, and that the
17 arm would not have any breaks or shatters or any damage,
18 any additional damage. There's no evidence how getting hit
19 in the arm could actually launch a body 30 feet as per the
20 Commonwealth's theory. And there's no evidence how a body
21 hit by a 7,000 pound SUV could sustain no injuries from the
22 neck down, which we just heard this morning.

23 The evidence before the Court, the only evidence that
24 is before the Court, is that the Commonwealth's own medical
25 examiner does not believe this is a homicide, and she went

1 on this morning to say that in her expert opinion, the
2 injuries are not classic pedestrian injuries and they are
3 every single one of them consistent with a physical
4 altercation. Calling a witness to simply espouse an
5 opinion like Trooper Paul did that belies science, common
6 sense or even logic, that's not enough to get the case to
7 the jury. The light most favorable to the to the
8 Commonwealth does not mean that the Court must believe the
9 Commonwealth's witnesses. What it means is if there is a
10 rational controversy in the evidence, the Court must accept
11 that evidence that favors the Commonwealth. But here there
12 is no rational controversy.

13 As put or expressed in Commonwealth vs. McCormack. It's
14 a 2023 case found at 491 Mass. 848, pinpoint cite 860,
15 "Where the Commonwealth's evidence is entirely
16 circumstantial, it cannot meet its burden if the evidence
17 -- if the evidence equally supports inconsistent
18 propositions, as resolution of such a case necessarily
19 requires conjecture or surmise."

20 In our view, there is no question that there's no
21 rational controversy related to the Commonwealth's theory.
22 Trooper Paul's theory is by definition not rational. It's
23 not reasonable, and it's basically -- based entirely on
24 conjecture, and that's why, in our view, the Court is
25 required to find Ms. Read not guilty of counts one, two,

1 and three. It's because each of the counts, as I said at
2 the beginning, necessarily include an element that John
3 O'Keefe was struck by Karen Read's vehicle.

4 Thus, if a rational jury cannot reasonably believe
5 Trooper Paul's theory, it's the only evidence presented by
6 the Commonwealth describing how Mr. O'Keefe possibly could
7 have been struck, then Ms. Read is entitled to an
8 acquittal. Nothing else matters. Nothing else in the
9 Court's evaluation, nothing else in the jury's evaluation,
10 nothing. Everything turns on whether or not the car hit
11 John O'Keefe, and the Commonwealth's only theory of how
12 that happened is from Trooper Paul's description.

13 If the Court were to deny this motion, then by doing so
14 tacitly, the Court is expressly endorsing Trooper Paul's
15 theory of how John O'Keefe was struck, and we don't believe
16 that that's rational. We don't believe that any rational
17 jury would ever unanimously agree with Trooper Paul, and
18 thus we ask the Court to find Ms. Read not guilty at this
19 time.

20 THE COURT: Okay.

21 MR. JACKSON: I'll submit.

22 MR. YANETTI: Your Honor, if I may just -- we have a
23 written motion --

24 THE COURT: Okay.

25 MR. YANETTI: -- for the Court to act on pursuant to

1 that argument. May I hand it to the clerk?

2 THE COURT: Yes.

3 MR. YANETTI: And I have a copy.

4 THE COURT: All right. I will hear you, Mr. Lally.

5 MR. LALLY: Yes, Your Honor, surprisingly, I would
6 disagree with counsel's sort of --

7 THE COURT: So let's leave the comments out.

8 MR. LALLY: Your Honor, as far as the comments, all I
9 was going to say is that I don't -- I would submit to the
10 Court --

11 THE COURT: It was the surprisingly that I took issue
12 with.

13 MR. LALLY: And my apologies for that. What I would
14 submit to the Court, Your Honor, is that this case does not
15 rest and fall with the testimony of Trooper Paul. Trooper
16 Paul's testimony, while important, when taken in
17 conjunction with the remainder of all of the other
18 witnesses and all of the other testimony that the Court has
19 heard, I don't want to minimize it, but at the same time,
20 that is not the only evidence that the vehicle struck Mr.
21 O'Keefe or interacted with Mr. O'Keefe. So what the Court
22 has, as far as the physical evidence next to Mr. O'Keefe's
23 body - the one sneaker in the location of the curb, the
24 glass, the drinking glass that Mr. O'Keefe is seen walking
25 out of the Waterfall Bar at approximately 12:11 a.m. with

1 that is in the vicinity, the direct vicinity, where the
2 Canton police officers actually recover it early in the
3 morning of January 29. You have the microscopic pieces of
4 the defendant's taillight which was testified by Ms. Hanley
5 to be consistent with the pieces of taillight from the
6 defendant's vehicle that are within or embedded within Mr.
7 O'Keefe's clothing. You have the remainder of the pieces
8 of tail lights. And this part is important in relation to
9 Trooper Paul's testimony as far as the linear momentum, and
10 it's all in the same sort of direction and path of all of
11 the roadway evidence that he observed that's discovered in
12 and around the area where Mr. O'Keefe's body was.

13 The testimony from Miss Vallier, Mx. Vallier, excuse
14 me, with reference to all of those taillight pieces and how
15 they were able to reconstruct front pieces that were found
16 on the ground and then put back together matching to that
17 but the taillight housing from the defendant's vehicle.
18 The taillight housing from the defendant's vehicle which
19 has the victim's Mr. O'Keefe's DNA contained on it as well
20 as the mitochondrial DNA testing of a hair that was on the
21 rear right quarter panel of the defendant's vehicle, which
22 also was -- matched the consistence with that of Mr.
23 O'Keefe, his mitochondrial DNA. As well as the Court heard
24 from Ms. Chart from Bode Technology.

25 You have the plethora of testimony from the various

1 civilian witnesses from that particular night. You have
2 the evidence and motive from the text communications as
3 well as the testimony of the children, in this case, as to
4 the state of their relationship from the defendant's own
5 mouth in those text communications, and in those voicemails
6 as to the state of their relationship. You have the
7 testimony in regard to Mr. O'Keefe and his recounting of
8 the state of their relationship and his numerous attempts
9 to break it off with Ms. Read prior to that date. There are
10 arguments that continue throughout the afternoon on the
11 28th and seemingly into the 29th. You have the defendant's
12 own statements that, "I hit him. I hit him. I hit him."
13 That come from multiple sources, including Firefighter
14 Nuttall, Firefighter Flummati, Firefighter McLaughlin, and
15 Ms. McCabe. You have her statements to the paramedics in
16 the back of the ambulance that the last time that she saw
17 Mr. O'Keefe, they had gotten into an argument. You have the
18 testimony in regard to Ms. Roberts and Ms. McCabe as far as
19 the altercation or the verbal arguments stemming from Ms.
20 McCabe's reference of (c) mother being a landmark,
21 being someone that Mr. O'Keefe used to date just prior to
22 that argument occurring in front of the house at 34
23 Fairview Road.

24 With each and every piece of evidence that was
25 presented throughout the course of the Commonwealth's case,

1 including the forensic evidence, including especially, one
2 thing I would stress for the Court is taking not only
3 Trooper Paul's testimony, but Trooper Paul's testimony in
4 juxtaposition to Trooper Guarino's testimony as far as the
5 vehicle or the native GPS locations of Mr. O'Keefe's phone
6 in reference to the timing and in particular the
7 information or data from the Toyota TechStream. Trooper
8 Guarino's GPS native location of Mr. O'Keefe's phone has
9 that reversal, the same reversal, the same three point turn
10 that Trooper Paul testified about, which occurred eight
11 minutes prior to the vehicle traveling twenty-four point
12 two miles per hour for approximately sixty-two feet in a
13 straight line in reverse. And as far as the testimony and
14 the evidence that the Court has before it, the Court also
15 has those backup testing videos that Trooper Paul conducted
16 with the defendant's vehicle, so the Court can see exactly
17 what that vehicle looks like at approximately 25 miles per
18 hour in reverse in a straight line. I would submit, Your
19 Honor, is that there's more than sufficient evidence from a
20 medical perspective, from a forensic perspective, from a
21 civilian witness perspective and from the investigation of
22 this case as to all three indictments that the Commonwealth
23 has met its burden particularly under the standard before
24 the Court at this time. And for those reasons, I would
25 request that the defendant's motion be denied.

1 THE COURT: Okay. In the light most favorable to the
2 Commonwealth under the prevailing Latimore standard here in
3 Massachusetts, I am satisfied the Commonwealth has met its
4 burden. The defendant's motion is denied.

5 So, Mr. Yanetti, are you calling your first witness?

6 MR. YANETTI: Yes, Your Honor.

7 THE COURT: Okay. So let's bring the jurors in,
8 please.

9 (Jury in.)

10 THE COURT: All right. So jurors, if you remember, in
11 my preliminary instructions to you a long time ago now, I
12 stressed to you that the burden of proof rests with
13 Commonwealth. The defendant has no burden of proof
14 whatsoever. Doesn't ever have to testify or present any
15 evidence. So the Commonwealth has completed its case. The
16 Commonwealth has rested. And I want you to keep in mind
17 that the defendant has no burden of proof.

18 Mr. Yanetti, do you have a witness for us?

19 MR. YANETTI: Thank you very much, Your Honor. The
20 defense calls Brian Loughran.

21 THE COURT: Okay.

22 BRIAN LOUGHRAN, sworn

23 MR. YANETTI: May I proceed, Your Honor?

24 THE COURT: Yes.

25

1 **DIRECT EXAMINATION**

2 **BY MR. YANETTI:**

3 Q Good morning, sir. In a good, loud voice, would you
4 state your name and spell your last name?

5 A Sure. It's Brian Loughran. It's L-O-U-G-H-R-A-N.

6 Q And where are you from, sir.

7 THE COURT: Mr. Loughran, I'm going to ask you to keep
8 your voice up as loud as you can, sir.

9 THE WITNESS: Sorry.

10 THE COURT: That's okay.

11 Q Maybe put your mouth as close to the mike as you can.

12 But where did you grow up, sir?

13 A Canton, Mass.

14 Q Is that where you live?

15 A Yes.

16 Q How long have you lived there?

17 A About 35, 36 years.

18 Q And did you go to Canton public schools?

19 A Yes.

20 Q Now, in the course of living in Canton, were you
21 familiar with the Albert family?

22 A Yes.

23 Q Which members of the Albert family were you familiar
24 with?

25 A All of them.

1 Q And when you say all of them, can you name the ones
2 that you were familiar with?

3 A I was familiar with Brian.

4 Q Brian Albert?

5 A Chris Albert, Brendan Albert, Kevin Albert, and I
6 believe Kathy Albert's the sister, but I'm not 100 percent
7 sure on her first name.

8 Q Okay. And those are the siblings that you had contact
9 with and were familiar with?

10 A Yes.

11 Q Did you know some better than others?

12 A Yes.

13 Q Whom did you know the best?

14 A Chris Albert.

15 Q What is the age difference between you and Chris
16 Albert?

17 A I believe we're the same age.

18 Q Did you graduate high school with him?

19 A He went to a different high school, but, yes.

20 Q Graduated at the same time?

21 A Correct.

22 Q And with regard to your familiarity with Chris Albert,
23 can you explain to the jury how you became familiar with
24 him, and what your relationship with him has been?

25 A I went to school with him, elementary school. We went

1 to middle school, and then he transferred to a Catholic
2 school. Then later in years, I began to work for Chris for
3 D & E Pizza delivering pizzas.

4 Q Okay. And what -- approximately, what ages were you
5 when you were delivering pizzas for D & E Pizza and Chris
6 Albert?

7 A I was 25, 26 years old.

8 Q And how many years did you deliver pizzas for him?

9 A Up until I got married, 35.

10 Q So several years?

11 A Eight years.

12 Q Eight years. Okay. And with regard to your
13 interactions or knowledge of Kevin Albert, can you describe
14 that?

15 A Kevin Albert would be through D & E Pizza if he came
16 in. Through the police department, we'd see him on
17 details.

18 Q All right. And were you friendly with him?

19 A Yes.

20 Q With regard to Brian Albert, could you describe your
21 interactions or your relationship with him?

22 A Again through D & E Pizzas, delivering pizzas to his
23 house. Cordial, polite, would say hello.

24 Q All right. So you're friendly with the Albert family?

25 A Correct.

1 Q Now, back in January of 2022, where were you working?

2 A I was working for the town of Canton.

3 Q In what department?

4 A I was working in the sewer department.

5 Q Is that also called the water department?

6 A Yes, water and sewer are combined.

7 Q And under what, you know, heading is that the water
8 and --

9 A It's DPW.

10 Q It's under the DPW, the Department of Public Works?

11 A Correct.

12 Q Now, back in January of 2022, were you one of the
13 regular snow plowers for the town of Canton?

14 A Yes.

15 Q And directing your attention to January 28th of 2022,
16 do you remember that day?

17 A Yes.

18 Q What do you remember about that day the 28th?

19 A It was a potential blizzard. We had been given a start
20 time.

21 Q All right. And when you say you had been given a start
22 time, what does that mean?

23 A It means that we're expected to be in our trucks at a
24 certain time on our route.

25 Q And who gives those instructions back in January of

1 2022?

2 A The supervisor for Canton DPW.

3 Q And who was that at the time?

4 A William Walsh.

5 Q Also known as Billy Walsh?

6 A Yes.

7 Q Now, when were you called in to do plowing that evening
8 or early morning?

9 A We were told to be in by 2:30.

10 Q And is that 2:30 a.m. or p.m.?

11 A A.M.

12 Q Would that now be on January 29?

13 A Correct.

14 Q So what time did you arrive at the DPW that early
15 morning?

16 A About 2:15.

17 Q When you got there, what did you need to do in order to
18 go out plowing?

19 A I needed to get into my truck and get that prepared to
20 go out.

21 Q All right. And your truck, is there one that's
22 specifically assigned to you when you plow?

23 A Yes.

24 Q And does that truck have any particular nickname?

25 A Yes, it's called the "Frankentruck".

1 Q And why is it called the Frankentruck?

2 A It is a truck that has a lot of different parts than
3 what it's required. It's not parts that were made for that
4 specific truck.

5 Q An older one?

6 A Yes. It was a truck that was very uncomfortable at the
7 beginning to use. So they tried to make it as comfortable
8 as possible.

9 Q All right. And that particular truck, is it used for
10 anything else other than snow plowing?

11 A Yes, it's used for everyday use.

12 Q Now, so you get to the DPW at 2:15. You say that you
13 get your truck ready. What is it that entail to get your
14 truck ready, and how long does it take?

15 A It takes about five minutes. We just basically, you
16 need to make sure that it's got enough gas in it, so we're
17 not going to the route and running out of diesel fuel,
18 which is not good. It's just basically going over the
19 truck, making sure, you know, you have everything you need
20 for that night.

21 Q And do you plow alone or with someone?

22 A By myself.

23 Q Now with regard to the visibility in your snow plow,
24 Frankentruck, can you describe that for the for the jury,
25 what you can see, what you can't see?

1 A So the Frankentruck has an air ride suspension and air
2 ride seat. So the seat is raised, so I can see over the
3 hood, and I can see about 5 feet on either side of the
4 passenger side, driver's side.

5 Q And when you say 5 feet, are you talking
6 straight out from the --

7 A From the windshield, straight out.

8 Q All right. And what if any lighting do you have on
9 Frankentruck?

10 A We have marking lights. We have two plow lights that
11 are situated at the corners of the trucks, and it's up
12 high. It illuminates very well. It very well seen.

13 Q Okay. And with the extra set of lighting that you just
14 described, how far can you see off to the sides, in front
15 of you, and directly in front of you?

16 A Probably 5 feet on the sides.

17 Q You already testified to that 5 feet straight out.

18 A Yep.

19 Q But what about the sides going forward?

20 A It's, you know, it's hard to decide -- to put into
21 words, but I can see a real long distance. The visibility
22 is fine. I, you know, it is extremely -- if you gave me
23 probably 5, 10 feet, 15 feet out, maybe even further.

24 Q Okay. All right. And with regard to the lighting, how
25 light -- how much light does that give off?

1 A Enormous amounts. It's almost driving with a spotlight.

2 Q And with regard to the air ride seats, what action did
3 you take with those that particular night?

4 A I raised it so that the bottom of my knees would hit
5 the steering wheel.

6 Q And what if any extruction(sic) obstructions, I should
7 say, were in front of you that would prevent you from
8 seeing what's in front of you or to the side?

9 A Nothing.

10 Q All right. Now, do you have a specific route assigned
11 to you?

12 A Yes, I do.

13 Q Can you describe that route? And by the way, that
14 specific route, was that the one that you were assigned on
15 January 29?

16 A Correct.

17 Q Could you describe that for the jury?

18 A Yes, it's a route that consists of Cedarcrest from
19 Kings Road to Chapman Street and everything in between.
20 There are a lot of streets I could name if you would like.
21 But Fairview is one. Spring Lane is one. Cedarcrest, Kings
22 Road. Those are pretty important roads that were, I would
23 consider, major roads on my route.

24 Q All right. Now that particular night, if you got there
25 at 2:15, what time do you think you were on the road by in

1 Frankentruck?

2 A I was on Cedarcrest about 2:30, 2:35.

3 Q Now, with regard to Cedarcrest, I would like to show
4 you a map, if I can.

5 MR. YANETTI: May I approach, Your Honor?

6 THE COURT: Yes.

7 Q I've handed you a document. If you could just review
8 that to yourself and then look up at me when you're done.

9 A (Witness complies.)

10 Q Do you recognize what's depicted on that?

11 A Yes.

12 Q What is it?

13 A It is my plow route and consisting of streets that I
14 plow.

15 Q All right. And to be fair, that's a portion of your
16 plow route, right?

17 A Correct.

18 Q There are other areas of the city that you plow?

19 A This actually depicts my actual physical route.

20 Q Oh, okay, great. And that's a fair and accurate
21 representation of the streets as they existed back in
22 January of 2022?

23 A Yes.

24 MR. YANETTI: I would offer that, Your Honor.

25 THE COURT: Any objection, Mr. Lally?

1 MR. JACKSON: No, Your Honor.

2 THE COURT: Okay.

3 (Whereupon Exhibit No. 651, Map, was marked as an exhibit.)

4 MR. YANETTI: And could I have permission to publish
5 before the jury?

6 THE COURT: Sure.

7 Q Okay. Now you just testified that you got to
8 Cedarcrest I believe you said 2:30 to 2:35 or so?

9 A Correct.

10 Q All right. As we look at this exhibit on the screen,
11 are you going from right to left or left to right on
12 Cedarcrest when you first approach Fairview?

13 A Right to left.

14 Q Okay. So you're going sort of from the upper righthand
15 corner of the diagram down Cedarcrest toward Fairview; is
16 that accurate?

17 A Yes.

18 Q Can you take the laser pointer and just confirm that
19 route for the jury? That's -- okay. Do you see that
20 Fairview road? Are you able to read that writing?

21 A I'm not to be honest with you. I'm sorry.

22 THE COURT: Do you still have that map in front of you?
23 Maybe that'll help him, Mr. Yanetti.

24 MR. YANETTI: And actually, can I orient it so it's
25 oriented just like that?

1 THE COURT: Sure.

2 Q Okay. That's how it's up on the screen.

3 A Okay.

4 Q And by the way, I should have asked this, but is it a
5 -- in terms of the -- is it you can't read the writing, or
6 you can't really see the outline of the streets?

7 A Both.

8 Q Okay. Well, that's not going to help much. Okay. If
9 we can have the lights back on.

10 MR. YANETTI: With the Court's permission, could I
11 leave that up on the screen while I ask a few more
12 questions?

13 THE COURT: Sure, except he still can't see it.

14 MR. YANETTI: Right. No, I know, but the jury can, so
15 I think it would be helpful for them.

16 Q All right. So you're coming down Cedarcrest, and would
17 Fairview be on your left or your right when you first
18 approach it?

19 A When I first approach, it's on my left.

20 Q All right. Now, do you take that left at that time?

21 A No, I do not.

22 Q Why not?

23 A At the time I'm pushing snow, and we don't want to
24 block any part of the road with snow, and taking a left
25 would have left a rin(ph) row of snow. So I proceed to the

1 end of Cedarcrest, do a cul de sac, and then head back up
2 Cedarcrest.

3 Q So there's a cul de sac at the end of Cedarcrest?

4 A Correct.

5 Q Dead end?

6 A Yes.

7 Q And you plow that?

8 A Yes.

9 Q All right. So then when you come back up is Fairview on
10 your right or your left?

11 A It is on my right.

12 Q What do you do?

13 A I take that right and continue to plow.

14 Q Now, are you familiar with the Albert residence on
15 Fairview Road?

16 A Yes.

17 Q How did you become familiar with that?

18 A Growing up in Canton, I knew where they lived.

19 MR. YANETTI: Can I have Exhibit 66 displayed with the
20 Court's permission?

21 THE COURT: Yes.

22 Q From where you are seated now, Mr. Loughran, are you
23 able to see what's on the screen?

24 A Yes.

25 Q And do you recognize that?

1 A Yes.

2 Q What do you recognize that to be?

3 A That is the Albert house, Brian Albert's.

4 Q And when you were passing the Albert home on Fairview,
5 the very first time you passed it, would it have been on
6 your right or your left?

7 A It would have been on my right.

8 Q What section of the road were you plowing at that
9 point?

10 A The middle of the road.

11 Q Why is that?

12 A I start in the middle, and I angle right with the plow.

13 Q Now, I want to direct your attention to when you were
14 -- your truck was essentially perpendicular to the
15 driveway. You see the driveway in Exhibit 66?

16 A Yes, I do.

17 Q When you were perpendicular to the driveway, where were
18 your headlights pointed?

19 A In front of me. In front of the truck.

20 Q I'm sorry?

21 A In front of the truck.

22 Q And what were you able to see of the front lawn of the
23 Albert residence that very first time you passed?

24 A I was able to see the entire front lawn.

25 Q And about what time was it that you first passed 34

1 Fairview Road?

2 A About 2:45.

3 Q Now, as you continued along past the driveway, did you
4 continue to have all of those headlights on in front of
5 you?

6 A Yes.

7 Q And as you continued along, what were you able to see
8 of that front lawn, how much of it?

9 A A very large portion, almost to the front steps.

10 Q And, now, when you're plowing, where is your attention
11 focused, sir?

12 A My attention is focused in front of me, and then to the
13 sides.

14 Q Why would your attention be focused to the sides?

15 A I am trying to be aware of any side traffic, any
16 pedestrians, and God forbid, any animals.

17 Q And when you were passing the Albert residence, as you
18 pass every home, what attention do you pay to the size of
19 the road and the lawns that are adjacent to the road?

20 A I'm again making sure that there are no animals, no
21 pedestrians, and making sure no one's coming out of their
22 driveways not expecting to see me.

23 Q And with regard to Exhibit 66, do you see the flagpole
24 there?

25 A Yes.

1 Q Is that something you had seen previously?

2 A Yes.

3 Q And when you made that first pass by that residence at
4 2:45 in the morning, sir, with your headlights on, what, if
5 anything, did you see on the front lawn in the area of the
6 flagpole?

7 A I saw nothing.

8 Q If there had been a 6 foot, 200 pound man lying in the
9 snow there, would you have seen it?

10 MR. LALLY: Objection.

11 THE COURT: Sustained.

12 Q Now, once you pass the residence, where do you go?

13 A I go to the end of Fairview.

14 Q And what street does that intersect with?

15 A That intersects with Chapman Street.

16 Q If we have the previous exhibit put back up with the
17 Court's permission?

18 A Sure.

19 Q Okay. Do you still have the exhibit oriented the same
20 way, sir?

21 A Yes, I do.

22 Q Where's Chapman Street on the exhibit? Down the
23 bottom, the top, or which --

24 A Down the bottom.

25 Q And when you come to the end of Fairview with

1 Cedarcrest in your rear now, right?

2 A Correct.

3 Q Do you take a left or a right on Chapman?

4 A I take a left.

5 Q All right.

6 A Onto Chapman.

7 Q Once you take that left, what do you do?

8 A I back up and then take a left to go back down
9 Fairview.

10 Q Okay. So you're essentially doing almost a three point
11 turn in the road?

12 A Correct.

13 Q All right. So now, do you go back down Fairview at that
14 time?

15 A Yes, I do.

16 Q And how far do you go down Fairview?

17 A To the end. To Cedarcrest.

18 Q Now, at this point in time, you would also pass the
19 Albert residence, correct?

20 A Correct.

21 Q Would it be on your right or your left?

22 A On my left.

23 Q Were you looking to the right and the left as you were
24 coming down?

25 A Yes.

1 Q How much light did your headlights illuminate of the
2 Albert's front lawn as you were coming down from Chapman
3 Street?

4 A Coming down Chapman, just about the entire front lawn.

5 Q And again, with regard to that area around the
6 flagpole, did you see anything on the lawn?

7 A Nothing.

8 Q Did you see a body?

9 A No.

10 Q All right. Now, after you've done these two passes,
11 sir, where do you go?

12 A I think take a ride onto Cedarcrest. I proceed up
13 Spring Lane, come down Spring Lane, and then do the
14 remaining in my route.

15 Q All right. How long did it take you before you wound up
16 back at Cedarcrest and Fairview?

17 A About 40, 45 minutes.

18 Q So I think you had previously testified you made the
19 first pass around 2:45?

20 A Correct.

21 Q So would that put us at about 3:30 when you're about to
22 make the second pass?

23 MR. LALLY: Objection.

24 THE COURT: Sustained. Ask it differently.

25 MR. YANETTI: Sure. I'm sorry.

1 Q What time was it, to your best estimate, in terms of
2 when you would have approached Fairview and Cedarcrest
3 again?

4 A 3:15 to 3:30.

5 Q All right. Now, when you approached that intersection,
6 again, are you approaching it such that Fairview would be
7 on your left or your right this time?

8 A On my left.

9 Q Same as last time?

10 A Correct.

11 Q What do you do when you approach Cedarcrest -- I'm
12 sorry -- when you approach Fairview and it's on your left?

13 A At that point, I have an option. I can go to the end
14 of Cedarcrest, or I can turn around at a street, depending
15 on how much snow I have on Fairview.

16 Q And with regard to the decision you made regarding that
17 choice, what decision did you make on January 29, at --

18 A Went all the way to the end.

19 Q Went all the way to the end of Cedarcrest?

20 A Correct.

21 Q Same thing you did the first time?

22 A Correct.

23 Q And then you come back up?

24 A Correct.

25 Q Is Fairview on your right or your left at that time?

1 A It would be on my right.

2 Q And did you take that right?

3 A Yes, I did.

4 Q What, if anything, unusual did you see at that time?

5 A At that point, I saw a Ford Edge on the side of the
6 road.

7 Q Where was it parked on the side of the road?

8 A In front of the Albert's house.

9 Q Where in front of the Albert's house?

10 A By the flagpole.

11 Q And why was that unusual?

12 A The Alberts never had cars that were parked out front.
13 And if -- it just stuck out as weird.

14 Q Now, what were the snow conditions like at that point?
15 This is now, I think you said about 3:15 to 3:30?

16 A It's starting to accumulate a lot quicker than what it
17 was previous.

18 Q And what policies does the DPW have regarding cars
19 parked in the street during a blizzard where there's
20 plowing to be done?

21 A We are to notify the supervisor. At that point, he will
22 make a phone call to the police, and depending on if they
23 can have the resident move it, it gets moved. If not, it
24 gets towed.

25 Q And with regard to that policy, did you comply with

1 that policy in those early morning hours?

2 A No, I did not.

3 Q Why?

4 A Because I was being courteous to the Albert family.

5 Q Now, once you saw the Ford Edge park on the side of the
6 road near that flagpole, what did you do?

7 A I had to go around the vehicle and as to not hit the
8 vehicle.

9 Q All right. And probably obvious, but as you're
10 approaching the vehicle, was it faced in the same direction
11 that you were traveling?

12 A Yes.

13 Q And so you're going around to the left or the right of
14 the vehicle?

15 A Left.

16 Q And once -- as you were approaching that vehicle, were
17 you able to see on the right side of that vehicle what the
18 lawn side?

19 A Yes.

20 Q Did you see any anything on the front lawn at that
21 time?

22 MR. LALLY: Objection.

23 THE COURT: I'll allow it. Did you see anything?

24 THE WITNESS: No.

25 Q Your lights were still on?

1 A Correct?

2 Q Now, once you pass the vehicle, did anything attract
3 your attention at all?

4 A No.

5 Q All right. Where do you go?

6 A I go up to the end of Fairview and do the same process.
7 Take a left on this Chapman, back down Chapman, take a left
8 into Fairview again.

9 Q Once you come back down Fairview, do you pass the
10 Albert residence again?

11 A Correct.

12 Q Was there -- that car that you saw --

13 A Correct.

14 Q -- had it moved from when you passed it the first time?

15 A No.

16 Q Were you able to see the front lawn of the Albert's in
17 front of it? As you were coming down Fairview toward
18 Cedarcrest?

19 A Not as much as the first time because the car blocked
20 the view.

21 Q All right. Now after that, how long did it take you
22 before you came back to that area to plow again?

23 A About three hours.

24 Q Do you recall about what time it was that you wound up
25 back on Fairview?

1 A I don't honestly recall what specific time.

2 Q Sure. Approximately, if it was 3:15 to 3:30 that
3 second time, what would be your best estimate of the time
4 when you came back?

5 A I would say I -- if I had to say, it would been 5:30 up
6 Fairview.

7 Q Okay.

8 A Came back down. And then at that point I wasn't able to
9 come go further than Carriage Lane.

10 Q Okay. And when you say that you went up Fairview and
11 came back down, you initially went from which side of
12 Fairview?

13 A Right side.

14 Q What would that be, the right side? I'm sorry. Would
15 it be the Cedarcrest side or the --

16 A It would have been Cedarcrest side.

17 Q Coming from Cedarcrest and then you went up Fairview,
18 came back down?

19 A Came back down. As I'm going up, I am actually seeing
20 first responders, and at that point as I'm coming back
21 down, the road is blocked at that point.

22 Q Okay. And when the road was blocked, what if any
23 plowing were you able to do after that on Fairview?

24 A I was able to go as far as Carriage lane and then turn
25 around.

1 Q Okay. And then I imagine it was several hours before
2 you could plow again?

3 A Before I could plow Fairview to the end of Cedarcrest,
4 yes.

5 Q All right. Now, I'd like to direct your attention to
6 February 15th of 2022. Were you approached by an
7 investigator who wanted to ask you questions about what you
8 had seen and done on January 29th of 2022?

9 A Yes.

10 Q Do you remember his name?

11 A Yes.

12 Q What is it?

13 A Paul.

14 Q And what was your understanding about whom Paul worked
15 for?

16 MR. LALLY: Objection.

17 THE COURT: Ask it differently.

18 Q On February 15th of 2022, were you ever approached by
19 anybody in law enforcement, sir?

20 A No.

21 Q So what was your understanding of Paul -- Paul's job?

22 MR. LALLY: Objection.

23 THE COURT: I'll see counsel at sidebar.

24 (Sidebar commences:

25 THE COURT: So before I hear the objection, I have no

1 idea who this is. Who's Paul?

2 MR. YANETTI: Paul Markowski is our investigator.
3 That's all. I just wanted to point out that he spoke to
4 our investigator in February of 2022, the police did not
5 talk to him until sometime in 2023. It's on a Bowden
6 issue.

7 THE COURT: Okay. So you can say that the police --
8 you can bring out that the police didn't talk to him.

9 MR. YANETTI: Okay.

10 THE COURT: What's the nature of your objection?

11 MR. LALLY: Leading and irrelevant.

12 THE COURT: So you can just point out when, if ever, he
13 spoke to the police.

14 MR. YANETTI: Oh, that's fine. One question while we're
15 here, Judge. The Commonwealth had given us an old accident
16 report, I think from 2015, where this witness was backing
17 up and kind of struck a pedestrian. I don't know if Mr.
18 Lally intends to go into that, but we would be objecting to
19 that.

20 THE COURT: Do you intend to go into that?

21 MR. LALLY: I do, but I was going to approach before I
22 do.

23 THE COURT: Okay. So we'll wait until then.

24 MR. YANETTI: That's fine.

25 end of sidebar.)

1 Q Just a couple of questions, Mr. Loughran.

2 A Sure.

3 Q At any point in 2022, were you ever approached by any
4 police investigators, sir?

5 A No.

6 Q When was the first time that you were approached by the
7 state police in this case; do you recall?

8 A I don't recall the actual date, but I do know --

9 Q Year?

10 A Yes.

11 Q What year was that?

12 A 2023.

13 Q And do you recall the name of the investigator that
14 approached you?

15 A Mike, Mike Proctor and sergeant I can't pronounce his
16 name. I don't want to.

17 Q If I said Bukhenik, would that ring a bell?

18 A Yes, it is.

19 MR. YANETTI: I have nothing further. Thank you, sir.

20 THE COURT: Okay, Mr. Lally.

21 MR. LALLY: Thank you, Your Honor.

22 **CROSS-EXAMINATION**

23 **BY MR. LALLY:**

24 Q Good morning, sir.

25 A Good morning.

1 MR. LALLY: Your Honor, may I approach?

2 THE COURT: Yes.

3 Q Sir, I'm showing you a document that's already been
4 marked as Exhibit 109. I'll just ask you to look at that
5 and look up whenever you're finished, okay?

6 A (Witness complies.) Yes.

7 Q Do you recognize that, sir?

8 A Yes, I do.

9 Q And what do you recognize that to be?

10 A These are the plow routes for from the town of Canton.

11 Q And there's different numbers that are associated with
12 different routes and different drivers assigned to those
13 routes; is that right?

14 A Yes.

15 Q And if you look down at number 11, is that your route
16 that you were talking about as far as the sort of portion
17 of Cedarcrest neighborhood that you plow?

18 A Yes.

19 Q And that's the route that you were assigned to on
20 January 28, into January 29th of 2022, correct?

21 A Yes.

22 Q Now, if I could ask just as far as there's a certain
23 way that you plow a row -- a rue -- yeah, excuse me.
24 There's a certain way that you plow a road, correct?

25 A Correct.

1 Q And when you're first plowing the road, you're sort of
2 plowing the middle of the road, correct?

3 A Correct.

4 Q And you do it in sort of a fashion that's referred to
5 as ring row to the right?

6 A Yes.

7 Q Can you explain to the jury what that is and sort of
8 why you're plowing a road in that particular fashion when
9 you're first starting to get out there with a plow?

10 A So ring row to the right refers to the snow coming off
11 the plow. It actually leaves a row of snow. We ring row to
12 the right to prevent cars from having to go through the
13 ring row to the left. If you go to the left, you've now put
14 the ring row in the middle of the last left hand lane. So
15 everything's to the right.

16 Q So everything's to the right, because if there was a
17 vehicle coming the other way, you'd be plowing into that
18 vehicle; is that correct?

19 A Correct.

20 Q And your goal sort of when you're first getting out
21 there to plow the roads is to sort of clear the middle of
22 the roadway first, correct?

23 A Correct.

24 Q So that's where your truck is when you first go out and
25 plow the road as you're sort of in the middle of the road

1 near the double yellow line if there is one on that road?

2 A Correct.

3 Q Okay. Now, this truck that you were driving, this
4 truck that you were driving on that day, how long have you
5 been assigned to that truck for plowing purposes?

6 A I was assigned to that truck for probably two years,
7 maybe longer.

8 Q Maybe longer. Were you driving that same truck in 2015?

9 A No.

10 Q No. Okay. So you were driving a different truck at
11 that point?

12 A Correct.

13 Q Do you remember what kind of truck that was?

14 A It was an F550 utility truck, pickup truck.

15 Q Similar in size or shape to the truck that you were
16 driving that day?

17 A No.

18 Q Now, you were asked some questions about February 15,
19 2022, and you spoke to some investigator on that day,
20 correct?

21 A February 15?

22 Q Yes, 2022. That Paul person you were talking about.

23 A Yes.

24 Q Okay. And you met him at a skating rink; is that
25 right? A Correct.

1 Q And you said in a statement to him at that time that
2 you would have seen a body on the front lawn or the
3 sidewalk; is that right?

4 A Correct.

5 Q Now, you're -- are you aware that there is no sidewalk
6 on the same side of the street as 34 Fairview Road?

7 A Correct.

8 Q Now, you mentioned some familiarity with the Alberts
9 and with the Albert residence. Are there other people on
10 that route that you're familiar with as far as where they
11 live and who they are and all that?

12 A Yes.

13 Q And how -- are you equally familiar with them, more
14 familiar with them, or less familiar with them?

15 A Equally.

16 Q Equally. Now, your familiarity with 34 Fairview Road,
17 does that extend to sort of the lighting around that area?

18 A No.

19 Q So do you know that there is actually no street
20 lighting whatsoever in the area of the fire hydrant, a
21 flagpole, or anywhere there for several hundred feet?

22 A Correct.

23 Q So you do know that?

24 A I -- yeah, for the -- I believe so, yes.

25 Q And so when you're driving by, you're looking for cars

1 coming out of the driveway, cars coming in the opposite
2 direction, people walking; is that correct?

3 A Correct.

4 Q And you're trying to look for those objects so that you
5 make sure that you don't strike them or hit them or
6 anything like that, correct?

7 A Correct.

8 Q And on February 15, 2022, when you had this meeting
9 with Paul, you told him about 3:30 or 4:-00 a.m. is when
10 you saw this Ford Edge on Cedarcrest, correct?

11 A Correct.

12 Q Now, in fact, when you first spoke to this individual
13 named Paul, you didn't tell him it was a Ford Edge,
14 correct?

15 A Nope, I told him it was a Ford Edge.

16 Q You didn't tell him first that it was a small SUV?

17 A No. Told him it was Ford Edge.

18 Q You remember at any time Paul taking you out in the
19 parking lot and showing you different vehicles and asking
20 you if those vehicles matched what vehicle you saw?

21 A No. He wanted to make sure that what I was telling him
22 was accurate, so he showed me what was a Ford Edge, but I
23 had already told them it was a Ford Edge.

24 Q So he brought you out to the parking lot at the skating
25 rink that you were meeting at, specifically showed you a

1 Ford Edge, and asked you if that was the vehicle?

2 A Correct.

3 Q Now do you know sort of the difference between if you
4 were to see a Ford Edge at night time in a snowstorm, the
5 difference between a Ford Edge and a Jeep Cherokee?

6 A Yes.

7 Q What's the difference?

8 A The tail lights in the back.

9 Q What about them?

10 A Ford Edge is a more round, the whole back facade is a
11 little bit more round. Jeep Cherokee are more square.

12 Q Now, what color was this SUV that you saw?

13 A I can't tell you that. I am colorblind.

14 Q Can you tell -- and I don't -- I'm just curious, sir,
15 as far as your colorblindness, can you tell whether or not
16 an object is dark or light just by looking at it or you
17 can't tell at all?

18 A I can see things that are light. I can see things are
19 dark. I can see true colors. I can't see shades of true
20 colors.

21 Q And so from what you saw, was this light or dark?

22 A Light.

23 Q Now, you told this Paul individual on February 15, that
24 the SUV that you saw was exactly where Mr. O'Keefe's body
25 was found, correct?

1 A Correct.

2 Q How do you know where his body was found?

3 A I told him specifically if he was looking at the door,
4 the front door, it was about 3 feet to the left of the
5 door. The width --

6 Q To the left of the door?

7 A Looking at the front of the door, to the left of the
8 door, pushing it up Fairview.

9 Q So if he wrote in his report that you told him that the
10 vehicle was exactly where the body was found, that would
11 not be true?

12 MR. YANETTI: Objection.

13 THE COURT: I'll allow that.

14 A Could you repeat that question, please?

15 Q If he wrote in this report that you told him that the
16 SUV was exactly where the body was found, that would not be
17 true, would it -- would it not?

18 A That would be true. The car -- the car was to the left
19 of the door, putting it in front of the flagpole.

20 Q My question for you, sir, is how do you know where Mr.
21 O'Keefe's body was found? At any point in time, did you
22 see Mr. O'Keefe's body on the front lawn?

23 A No.

24 Q So how do you know where Mr. O'Keefe's body was found?

25 A Through police reports, police interviews, stuff that

1 was post -- posted on -- on the media.

2 Q Are you seeing police reports in the media, correct?

3 A Well, not the police reports. I'm sorry. But what was
4 said during -- on the news.

5 Q So what you've heard on the news, not necessarily what
6 you saw or what you know yourself, correct?

7 A Can you repeat that question, please?

8 Q You're recounting sort of what you've heard or saw in
9 the news, and so this doesn't come from your personal
10 knowledge or anything about where Mr. O'Keefe was, correct?

11 A Correct.

12 Q Okay. Now you also spoke with some other individuals in
13 May of 2023, correct?

14 A Correct.

15 Q Now, did you tell those individuals that you actually
16 came in, and when you say came in, you come into sort of
17 the main sort of hub or the shed on Bolivar Street,
18 correct?

19 A Correct. We punch in.

20 Q That's where you punch in and you pick up your truck,
21 and you sort of do your checkpoint around the truck, and
22 then you go out and plow?

23 A Correct.

24 Q Now, you were plowing on this street. Was there any
25 other sort of subcontractor or anything else that was

1 working plowing the roads as well?

2 A Yes.

3 Q And who was that?

4 A It was -- it was By the Yards Landscaping.

5 Q And so they assist as far as the plow route is
6 concerned, and they go around and they plow things on the
7 same route that you were describing, correct?

8 A Correct.

9 Q Now, these other people that you talked to in May of
10 2023, did you tell them at that time that you actually came
11 in around 11:30 p.m. to 12:00 a.m.?

12 A I don't remember that.

13 Q You don't remember that, or you didn't tell them?

14 A I don't remember that.

15 Q That would be a significant difference, 11:30 p.m. to
16 12:00 a.m. from 2:15 a.m. to 2:30 a.m., correct?

17 A Correct.

18 Q Now you also indicated to them at that time that you
19 went past Fairview at approximately 12:00 a.m. and 2:00
20 a.m., correct?

21 A I never did 12:00, but it was definitely 2:30, 2:40 --

22 Q So if they wrote that in their report --

23 A -- 2:35 --

24 Q -- that would be inaccurate as well, correct?

25 MR. YANETTI: Objection.

1 THE COURT: Sustained. And only one person can talk at
2 a time.

3 Q I apologize. I'm sorry, sir. Please continue and
4 finish your answer.

5 A I didn't hear the question.

6 Q Okay. Well, let me ask it again. So as far as if that
7 was contained within a report regarding that conversation
8 in May of 2023, that you went past Fairview Road or went
9 down Fairview Road at 12:00 a.m. and 2:00 a.m., that would
10 not be accurate, correct?

11 MR. YANETTI: Objection.

12 THE COURT: Sustained. Ask it differently.

13 Q Did you go down Fairview Road at 12:00 a.m. and 2:00
14 a.m.?

15 A No.

16 Q If that were contained in a report of your conversation
17 you had in May of 2023, would that be accurate?

18 MR. YANETTI: Objection.

19 THE COURT: Sustained. Ask it differently, Mr. Lally.

20 Q Now as far as that conversation that you had in May of
21 2023, did you tell those individuals that you saw the
22 vehicle around 1:30 or 2:00 in the morning?

23 A Again, I don't remember ever saying that.

24 Q Is that accurate as far as whether or not you told them
25 that?

1 A Again, I don't remember saying that.

2 Q Did you see a vehicle around one-thirty, two o'clock in
3 the morning?

4 A I wasn't on the road at one-thirty or two o'clock in
5 the morning.

6 Q Correct. Now, do you also recall telling those
7 individuals that Fairview Road was blocked off by cruisers
8 at about 3:00 or 3:30 in the morning?

9 A Again, that would have been incorrect.

10 Q Do you recall saying that in May of 2023?

11 A I do not.

12 MR. LALLY: May I approach, Your Honor?

13 THE COURT: Yes. Show counsel. Thank you.

14 Q Sir, I'm going to ask you to read -- showing you a
15 document, I'm going to ask you to read this paragraph, this
16 paragraph, and this paragraph to yourself, okay? And then
17 whenever you're done, just look up, okay?

18 A (Witness complies.)

19 Q Are you finished, sir?

20 A Yes.

21 MR. LALLY: Okay. May I approach just to retrieve the
22 document?

23 THE COURT: Yes.

24 Q Mr. Loughran, after having reviewed that, is your
25 memory refreshed as to that conversation you had in May of

1 2023?

2 A No, it does not.

3 Q So you still, after reading that, don't recall telling
4 anybody in May of 2023, that you came in around 11:30 p.m.,
5 12:00 a.m. on the 28th, 29th?

6 A I never came in at 11:30, 12:30 at night. It was 2:30
7 call in.

8 Q You don't recall indicating to anyone in May of 2023
9 that you went past Fairview at 12:00 a.m. and 2:00 a.m.?

10 A Correct. Never did.

11 Q And you don't recall telling anyone that you saw the
12 car around 1:30 or 2:00 a.m.; is that correct?

13 A Correct.

14 Q You don't recall telling anybody that the part of
15 Fairview containing 34 Fairview was blocked off at 3:00 or
16 3:30 a.m., correct?

17 A Correct.

18 Q Now, if the part of Fairview that you were talking
19 about, so you didn't say that in May of 2023, because at
20 3:00 or 3:30, the roadway wasn't blocked off, correct?

21 A Correct.

22 Q It was blocked off sometime around 6:00 a.m., correct?

23 A Correct.

24 Q Okay. And so if you had said that the roadway was
25 blocked off at 3:00 or 3:30 in the morning, and it was

1 actually 6:00, then when you saw the vehicle, it would have
2 been off a little bit as well, correct?

3 MR. YANETTI: Objection.

4 THE COURT: Sustained.

5 Q Seeing the car at 1:30, 2:00 in the morning with the
6 road being rocked off -- blocked off -- excuse me -- at
7 3:00 or 3:30 in the morning, if the road's blocked off at
8 6:00 a.m., then that actually would have meant you saw a
9 car sometime around 5:00 a.m., correct?

10 MR. YANETTI: Objection.

11 THE COURT: Sustained.

12 Q You sure you didn't see a black Lexus SUV in front of
13 the house at 34 Fairview Road around 5:00 a.m.?

14 A No.

15 Q Now you also were asked some questions, and you spoke
16 to some troopers in August of 2023, correct?

17 A Correct.

18 Q And the town of Canton, they have a parking ban in
19 Canton; is that correct?

20 A Correct.

21 Q That goes from November until April?

22 A Correct.

23 Q Now, part of your plow route is -- is a road called
24 Tippiycart, correct?

25 A Correct.

1 Q Where is Tippycart in relation to Fairview?

2 A It is on top of -- it's on the right side of
3 Cedarcrest. It would put it two streets before Fairview.

4 Q And at some point, when you were plowing on Tippycart
5 that night, you actually hit a basketball hoop; is that
6 right?

7 A Yes.

8 Q And did you call that in?

9 A Yes.

10 Q And as a result of that, what happened with the
11 basketball hoop after that?

12 A Nothing. The point was to make sure I was covered,
13 basically. That's why I notified my supervisor that I hit
14 the basketball hoop.

15 Q And about what time was that that you hit the
16 basketball hoop?

17 A I don't recall.

18 Q Was it closer to when you started, closer to when you
19 ended?

20 A I don't recall. I don't recall what time.

21 Q So you don't recall anything specific about that time
22 frame, correct?

23 A No, just that I know I hit the basketball net.

24 Q And obviously, and I'm not trying to put words in your
25 mouth or anything, sir, but you didn't intentionally hit

1 the basketball hoop, correct?

2 A Correct.

3 Q So you hit it because you didn't see it, correct?

4 A No, I was attempting to avoid the net by going around
5 it, and the machine had a different sized body than what it
6 originally had, and I over -- I underestimated when I was
7 going around that I needed to be wider.

8 Q So you misjudged the distance; is that fair to say?

9 A Yes.

10 MR. LALLY: May we approach, Your Honor?

11 THE COURT: Okay.

12 (Sidebar commences:

13 MR. LALLY: I intend to ask him about striking a
14 pedestrian in 2015.

15 THE COURT: So tell me what the -- the purpose of that
16 is.

17 MR. LALLY: The purpose of that is, Your Honor, that's
18 a small truck and he's in a plow truck. He's doing plowing
19 for the town of Canton, and this witness has testified that
20 he always checks all over the place, he always knows where
21 everything is around and I think that's belied by the fact
22 that he struck a pedestrian driving a smaller truck in
23 2015.

24 THE COURT: Was it during a blizzard while he was
25 plowing?

1 MR. LALLY: While he was plowing. I don't know if it
2 was a blizzard or not, but it's while he was plowing for
3 the town of Canton. It's a DPW truck.

4 THE COURT: And the purpose is what?

5 MR. LALLY: The purpose it goes to this witness's
6 credibility as far as his ability to see things outside
7 while he's conducting his plowing. If he's so attentive to
8 it that he actually struck another human being, backed into
9 one while he was plowing.

10 THE COURT: What do you say, Mr. Yanetti?

11 MR. YANETTI: Well, you were told that it's a different
12 truck. First of all. Second of all, you were not told
13 that this accident occurred while he was going in reverse
14 and was looking at one side and wasn't paying attention to
15 the other side in reverse. So we have a prior bad act from
16 eight -- seven years before this. It's one accident in a
17 different truck going in a different direction, and it does
18 not impeach his credibility whatsoever. He says that he's
19 careful. Even careful people get into accidents. That's
20 why they're called accidents. But this was -- it's
21 completely in apposite to the situation that we have
22 here. There's no reason to take a shot at him for, you
23 know, an accident that's completely unrelated to this.

24 MR. LALLY: I'm not taking a shot, Your Honor. And the
25 other thing that I would add is that he also when asked, he

1 indicates that he could see the pedestrian or saw the
2 pedestrian prior to striking him, whereas several other
3 witnesses indicate that he wasn't looking and couldn't see
4 the pedestrian.

5 MR. YANETTI: Those witnesses are not on the
6 Commonwealth's witness list. They're not going to testify.
7 How is that coming in? I mean --

8 THE COURT: Mr. Lally, if it weren't so remote I might
9 let it. I'm not going to let it in because it's remote.
10 You got the basketball hoop. All right.

11 MR. LALLY: Understood.
12 end of sidebar.)

13 THE COURT OFFICER: Quiet, please.

14 Q Now, sir, at some point prior to coming in here and
15 testifying today, have you met with Mr. Yanetti?

16 A Yes.

17 Q How many times?

18 A Twice.

19 Q And when were those times?

20 A Tuesday and Saturday.

21 Q Tuesday and Saturday when, sir?

22 A Tuesday of last week. Saturday of last week.

23 Q And this Paul person that you spoke of before, was that
24 person present there as well?

25 A Yes.

1 Q And did you make note of Paul writing anything down or
2 Mr. Yanetti writing anything down while you were talking to
3 them?

4 A No.

5 Q And as far as you're aware, there's no reports that
6 were generated from any of those conversations or any of
7 those meetings; is that correct?

8 A Correct.

9 Q So, sir, I'm correct and if I say that you're sure
10 about every time that you went down Fairview Road and
11 everything that you saw going down Fairview Road, but
12 you're completely unaware of the time that you ran into and
13 struck a basketball hoop that night; is that correct?

14 MR. YANETTI: Objection.

15 THE COURT: Sustained. Ask it differently.

16 Q You're sure about all the times that you went Fairview
17 Road?

18 A Yes.

19 Q And you have no idea what time that you went on
20 Tippiyart and you struck a basketball hoop; is that right?

21 A If you ask me to guess, I can guess for you.

22 Q I'm not asking you to guess, sir. I'm asking whether
23 or not you know.

24 A I don't recall exactly what time I hit that net.

25 MR. LALLY: Nothing further, Your Honor.

1 THE COURT: Mr. Yanetti.

2 MR. YANETTI: Just very briefly.

3 **REDIRECT EXAMINATION**

4 **BY MR. YANETTI:**

5 Q There's just one question I want to clear and make sure
6 we understand what's going on here.

7 THE COURT: So no statement.

8 MR. YANETTI: Sure.

9 THE COURT: Just ask the question.

10 MR. YANETTI: I always do that. I apologize, Your
11 Honor.

12 Q You were asked a question by Mr. Lally, are you sure
13 you didn't see a black Lexus at around 5:00 a.m. in front
14 of Fairview, and your answer was no. And my question to
15 you is, does that mean that you're not sure if you saw one
16 or that you didn't see one?

17 MR. LALLY: Objection.

18 THE COURT: I'll allow that.

19 A I did not see a Lexus at 5:00 a.m.

20 Q At any point that night while you were plowing --

21 A No.

22 Q -- did you ever see a black Lexus in front of 34
23 Fairview?

24 A No.

25 MR. YANETTI: Thank you, sir.

1 MR. LALLY: Very briefly.

2 **RECROSS-EXAMINATION**

3 **BY MR. LALLY:**

4 Q Based on your timeline, were you on Fairview Road at
5 5:00 a.m.?

6 A Yes.

7 Q How so, sir?

8 A It was about three hours after the last time I went on
9 it. So it put me I was last on it at about quarter of
10 four, about five-thirty.

11 Q You're on the road about 2:45, and you said it took you
12 about 45 minutes to sort of do the loop and come back,
13 correct?

14 A Correct.

15 Q And from the time that you were on there, including the
16 time that it took you to plow and the time that it took you
17 to do all of those things along the route, you're coming
18 back to Fairview Road 45 minutes later, or it took you 45
19 minutes

20 to do the route?

21 A It was about 45 minutes.

22 Q And so from there, 45 minutes from what time are we
23 talking that you were first there? You said about 2:45 or
24 so?

25 A About 3:30.

1 Q It was about 3:30, okay. So about three hours after
2 that would then be about 6:30, correct?

3 A About. It was about. I mean, I know I went up there
4 and saw the first responders coming down. And then --

5 Q I understand that, sir. What I'm asking is you had
6 testified that you may or you were on Fairview Road around
7 5:00 a.m. If you're not returning for three hours later
8 and that's about 6:30 from 3:30, correct?

9 A Correct.

10 Q So then you were not on Fairview Road at 5:00 a.m.,
11 correct?

12 A I was. The time that it took me to do what I needed to
13 do put me there about 5:00. So when I'm coming down
14 Cedarcrest from doing my route, I am constantly looking at
15 Fairview to make sure. That is considered a main road so
16 we need to take that as a priority. So if it's a lot of
17 snow on that road, I am going to go, turn around, and do
18 the road so that the road is available, so first responders
19 have access to that road.

20 Q So, sir, what I'm saying is you testified, this is your
21 timeline, that you came down there around 6:30 in the
22 morning, correct?

23 A My timeline was 5:30.

24 Q You said three hours 3:30.

25 A It was 45 minutes.

1 Q No, no. Forty-five minutes was from 2:45 to get you to
2 3:30, then three hours later, it's 6:30, correct?

3 A It was about 45 minutes because I didn't get a lot of
4 time. At that time, the snow was coming down at a
5 significant rate and I needed to make sure Fairview was
6 kept clear. So I come down and I checked. So I had my --
7 the streets are all around Fairview. They're five, ten
8 minutes around Fairview. So the furthest street from
9 Fairview is Kings Road.

10 Q And so my question is, sir, are you talking about
11 coming down Fairview or are you talking about being on
12 another road and looking at Fairview?

13 A Coming down Cedarcrest looking at Fairview.

14 Q Despite that timeline that you gave earlier.

15 A I am always looking at that street.

16 MR. LALLY: Nothing further.

17 THE COURT: All right. Mr. Loughran, you are all set,
18 sir.

19 THE WITNESS: Thank you.

20 MR. JACKSON: Your Honor, we would ask Dr. Marie
21 Russell to join us.

22 (Testimony concludes.)
23
24
25

C E R T I F I C A T I O N

I, CHRISTINE D. BLANKENSHIP, NOTARY PUBLIC, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE RECORD OF THE COURT PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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